IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1592 OF 2006

Anant Tukaram Nalawade .. Petitioner.

V/s.

Sou. Latika Anant Nalawade .. Respondent.

Mr. S.G. Deshmukh for the Petitioner.

Mr.Sandeep Dadwal for the Respondent.

CORAM : R.M. SAVANT, J.

DATED : 08th JUNE, 2007.

P.C.:

. This petition impugns the order dated 19.1.2006 passed by the learned Civil Judge, Sr.Dv.Sangli in Special Civil Suit No. 63/2003 filed by the respondent No.1 abovenamed. The petitioner is the husband who has challenged the said order, by which order, interalia, following directions are issued in clauses 2 and 3 thereof :

> "2. The defendant do pay to the plaintiff a sum of Rs.1500 per month from 7.1.2006, pending the herein and final disposal of the suit in addition to the amount of maintenance awarded by

Judicial Magistrate, First Class Tasgaon.

3. The defendant is directed to provide either residential accommodation to the plaintiff befitting to his status or to arrange for the same by payment of deposit and rent within a period of one month failing which it would be open to the plaintiff to take suitable steps to enforce the terms of this order."

2. This petition had come up for admission on 20th of March, 2006 when the learned counsel for the petitioner made a statement that the petitioner would not challenge the directions contained in clause 2, insofar as grant of interim maintenance is concerned. Notice, therefore, was issued to the respondent herein restricted to the challenge to clause 3.

3. The challenge to clause 3 i.e. the directions contained therein, is on the ground that no such prayer was made in the main application or the application for interim maintenance and that the learned Judge has gone beyond the scope of the pleadings and therefore, the said direction is unsustainable.

4. On behalf of the respondent wife, it is contended that maintenance includes residence also and therefore, the said direction cannot be faulted. The learned counsel further submitted that the said contention is based upon judgments of the Apex Court. Shri Deshmukh, the learned counsel for the petitioner, submits that the hearing of the suit has commenced and the said suit is likely to be disposed in the near future. The learned counsel further submitted that in case this court was not inclined to interfere with the said directions contained in clause 3, the interim maintenance may be slightly enhanced so that residence is also taken care of.

5. In my view, without going into rival contentions, it would be just and proper that in substitution of the direction contained in clause 3 of the order dated 19.01.2006, the petitioner is directed to pay enhanced interim maintenance of Rs.300/- to make a total amount of Rs.1800/- per month from the date of the order. This would be subject to the final orders that would be passed in the said special civil suit.

6. Shri Deshmukh states that the amount due till the filing of the present petition has been deposited in this court and the subsequent amount due is deposited in

the trial court. The respondent No.1 would be at liberty to withdraw the said amount. Balance due amount payable as per this order would be paid by the petitioner to the respondent within eight weeks from today.

7. Petition is disposed of in the above terms.

(R.M.SAVANT,J.)

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